IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.54 of 2001.

Dated of Decision: December 3, 2007.

State of H.P. …… Appellant.

Versus

Chander Shekhar. ……. Respondent.

Coram

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant	**:**	Mr. V.K. Verma, Addl. Advocate General.
For the Respondent	**:**	Mr. B.C. Verma, Advocate, vice Mr. Romesh Verma, Advocate.

Surinder Singh, J (oral):

Heard and gone through the record.

The respondent was tried for the offence punishable under Section 61(1)(a) of Punjab Excise Act, as applicable to Himachal Pradesh for allegedly having 30 pouches of licit liquor of 750 M.L. in his possession.

In nut-shell, the case of the prosecution against the respondent has been that on 5.3.1998, the respondent was traveling on Seat No.7 in HRTC Bus No.HP-14-3558. ASI Hem Raj, Incharge, was busy in traffic checking near Girls School, Subathu alongwith the police officials. The said bus was being driven by Prem Lal (PW2) and Shyam

Whether reporters of local papers may be allowed to see the judgment? Yes.

Lal (PW 1) was the conductor. The police conducted the search of the bus and found a bag near seat No.7, where the respondent was sitting, and containing 30 pouches of country liquor Patiala Orange. Out of the case property, the sample only from three pouches were taken in three separate nips, which were sealed with seal impression `H' and the entire case property was taken into possession vide memo Ex.PW3/A. A ruqa Ex.PW4/A was sent for the registration of the case, on the basis of which FIR Ex.PW4/B was registered. The respondent was found drunk. He was also got medically examined. The police prepared site plan. The case property was deposited in the malkhana. Samples were taken for analysis to the Chemical Testing Laboratory, Kandaghat by Constable Vijay Kumar (PW5). On the receipt of the report Ex.PW6/B, it was found to be of the country liquor. Finding a case against the respondent, under the aforesaid sections, challan was presented in the court for trial.

The respondent was charge-sheeted. He denied the charge under the aforesaid section and claimed trial. To prove its case, the prosecution examined the witnesses and the respondent was also examined under Section 313 of the Code of Criminal Procedure. His case was of denial simplicitor.

The acquittal of the respondent has been assailed in the instant appeal, on the ground that the trial court did not appreciate the evidence of the prosecution in the right perspective.

I have given my thoughtful consideration to the points raised. PW1 Shyam Lal, Conductor of the bus has stated that the respondent was sitting at seat No.7 and the bag was lying near the said seat, whereas, driver Prem Lal (PW2) stated that the said bag was found near Seat Nos.9, 10 and 11. Further PW1 has stated in his cross-examination that on coming to know that the said bag contained the liquor, no proceedings were conducted by the police on the spot. Neither the samples were taken nor the case property was sealed. Even the documents were also not prepared. PW2 Prem Lal has also made the similar version, whereas, PW3 Surinder Kumar, Constable, in his cross-examination has stated that he was checking the bus from the back-side, whereas, ASI Hem Raj, on the recovery of the bag had raised the voice. On this he (PW3) went to the front side, but he did not know who was sitting there. The bag was taken down from the bus. On inquiry ASI Hem Raj had informed that the bag was recovered from seat No.7.

Contra, ASI Hem Raj has stated that the entire proceedings were conducted on the spot, where the liquor

was recovered. On the perusal of the statement of the driver, conductor and Constable Surinder Kumar, it is revealed that neither the samples from the recovered quantity were taken nor the case property was sealed on the spot. Even Baldev Singh Head Constable, who was the MHC at that time, has not stated anything about the deposit of the case property with him, whereas, Vijay Kumar, PW5 has stated that on 9.3.1998, he took the samples from MHC Baldev Singh for its deposit in CTL, Kandaghat for analysis. But how these samples came to the malkhana is not known nor stated by the Investigating Officer or by the MHC. Therefore, the link evidence is not complete.

It is also pertinent to point out that the witness PW6 ASI Hem Raj has deposed that the case property was sealed with seal impression `H' and the samples were also sealed with the same seal, but neither the sample of the seal is exhibited at any time during the proceedings before the trial court nor it is available on record. Even Constable Vijay Kumar has not stated that he had taken the sample of seal with him with the samples of liquor to deposit it in the CTL Kandaghat. The Investigating Officer has also not taken the samples from the remaining 27 pouches in order to know what it had contained.

On account of the above omissions, contradictions and embellishments, in my opinion, the prosecution case does not inspire confidence and the learned trial court has rightly acquitted the respondent. I do not find any perversity in the impugned judgment, accordingly, the appeal is dismissed.

The respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of the case.

The matter stands disposed of.

December 3, 2007. **(Surinder Singh)**
(Pds) **Judge.**